

01285

KEITH BAKER
P.L.# 2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-187670

DATE: November 12, 1976

MATTER OF: Hall & Son, Inc.

DIGEST:

Protest alleging that requirements in specification were restrictive and "proprietary" in nature is untimely pursuant to 4 C.F.R. 20.2(b)(1) (1976) which provides that protest based on alleged impropriety in solicitation shall be filed before bid opening date and protest was received after such date.

Hall & Son, Inc. (Hall) protests the award of a contract under solicitation No. PROC 7717(F), issued by the Food and Drug Administration (FDA) for the installation of new oil burners for the boilers at the Beltsville Special Pharmacological Animal Laboratory.

Bids were opened for the referenced solicitation on September 13, 1976. On October 6, 1976, Hall was notified by FDA that its bid had been found nonresponsive for two reasons. First, the burner proposed by Hall did not comply with paragraph 5-03 of the specifications which required the incorporation of a rotary discharge damper in the burner fan. Second, Hall failed to submit the required evidence of current active certification that Hall or its subcontractor was a holder of the "R" repair symbol, as required by paragraph 11-01 of the specifications.

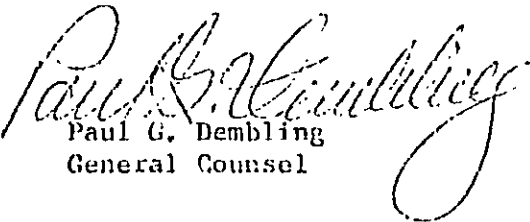
On October 13, 1976, Hall protested to FDA the rejection of its bid on the grounds that the specifications under which its bid had been found nonresponsive were unnecessary and "strictly proprietary" in nature. On October 19, 1976, our Office received a letter from Hall protesting the rejection of its bid for the same reasons set forth in the protest to FDA.

Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening date are required to be filed prior to bid opening. 4 C.F.R. 20.2(b)(1) (1976). Hall did not protest the allegedly restrictive nature of the solicitation with respect to the requirement of a rotary discharge damper

B-187670

and certification of the "R" repair symbol prior to bid opening, by which time the alleged restrictiveness should have been obvious to Hall. Accordingly, its contentions in this regard are untimely.

For the foregoing reasons, the protest is untimely and will not be considered on its merits.


Paul G. Dembling
General Counsel